LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAY 23 1958
JOHN T. FEY, Clerk

No. 15584

United States
Court of Appeals
for the Ninth Circuit

CHANAN DIN KHAN,

Appellant,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California.
Northern Division.

FILED
JUL 29 1957
PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—7-19-57

No. 15584

United States
Court of Appeals
for the Ninth Circuit

CHANAN DIN KHAN,

Appellant,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California.
Northern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—7-19-57

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer	7
Attorneys, Names and Addresses of	1
Bond for Costs	22
Certificate of Clerk to Record on Appeal	25
Complaint	3
Findings of Fact and Conclusions of Law	17
Judgment	20
Memorandum and Order	9
Notice of Appeal	21
Notice to Prepare Record on Appeal	24
Order Extending Time to Docket Appeal, Dated April 9, 1957	24
Order Extending Time to Docket Appeal, Dated May 9, 1957	25
Statement of Points on Appeal	28

NAMES AND ADDRESSES OF ATTORNEYS

COLLEY & SAKUMA,
NATHANIEL S. COLLEY,
621 P Street,
Sacramento, California.

Attorneys for the Plaintiff.

LLOYD H. BURKE,
United States Attorney;

CHARLES ELMER COLLETT,
Assistant U. S. Attorney,
422 Post Office Building,
San Francisco, California.

Attorneys for the Defendant.

In the District Court of the United States for the Northern District of California, Northern Division

Civil Action No. 7447

CHANAN DIN KHAN,

Plaintiff,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTION

Plaintiff complains of defendant and alleges:

I.

This is an action of a civil nature brought by plaintiff to review an order of defendant ordering him deported, and to declare the same void, and to enjoin defendant from executing said order.

II.

This action is brought under the provisions of Section 10, et seq., of the Administrative Procedure Act, 5 USC 1009, and of the Immigration and Nationality Act of 1952, 66 Stat. 208, and of the 14th Amendment to the United States Constitution.

III.

That on June 29, 1956, at San Francisco, California, one Monroe Kroll, Special Inquiry Officer

of the United States Department of Justice, Immigration and Naturalization Service, made and entered his order that plaintiff be deported from the United States to Afghanistan on the ground that plaintiff is a deportable alien because he has twice been convicted of crimes involving moral turpitude, to wit, violation of Section 145(b), United States Internal Revenue Code, income tax evasion.

IV.

That plaintiff, though a resident of this country since about April 25, 1923, is a native of Afghanistan, and does not read, write, speak or understand the English language well, and while he admits his conviction of violating the Internal Revenue Code, alleges that the facts and circumstances surrounding his offense were such that the crime did not involve moral turpitude, and that he is not therefore a deportable alien within the meaning of the Immigation and Nationality Act of 1952.

V.

Plaintiff also alleges that his conviction at a single trial by the same jury and before the same judge, though of two counts of a two-count indictment, does not represent two distinct crimes within the meaning of Section 241(a)(4), Immigration and Nationality Act of 1952.

VI.

That after the order of deportation entered as aforesaid, plaintiff duly and seasonably filed his

appeal to the United States Department of Justice, Board of Immigration Appeals, which appeal was on or about August 31, 1956, dismissed, and said deportation order is now final; that plaintiff has exhausted his administrative remedies herein.

VII.

That defendant is now, and at all times mentioned herein has been the District Director, United States Immigration and Naturalization Service, and is sued herein in his official capacity as such officer.

VIII.

That the defendant herein threatens to execute his said deportation order forthwith, and threatens to take plaintiff into custody and deport him to Afghanistan before this action may be heard on its merits, and unless restrained by order of this Court, defendant will execute, or cause to be executed, his order deporting plaintiff as aforesaid, and will thereby deprive plaintiff of all opportunity to be heard herein and to have the validity of said order tested in Court or judicially reviewed.

IX.

That a real controversy exists between the parties hereto as to the validity of said order and as to the justification therefor, plaintiff claiming that he is not a deportable alien within the meaning of the Immigration and Nationalization Law of 1952, since the crimes of which he was convicted do not represent two distinct crimes, and that his offense does

not involve moral turpitude, and defendant claiming him to be deportable because his offense represents two crimes and each involved moral turpitude.

Wherefore, plaintiff prays judgment as follows:

1. That this Court issue an Order to Show Cause to defendant, ordering him to show cause, if any he has, at some convenient time and place, why he should not be restrained from executing said deportation order pending review of the same by this Court, and that pending the hearing on such order, he be so restrained, and after hearing the enforcement of said order be forever enjoined.

2. That this Court review said order, and after such review, enter its judgment declaring the same to be null and void for the reason that plaintiff has not in fact been twice convicted of crimes involving moral turpitude within the meaning of the Immigration and Nationality Act of 1952.

3. That plaintiff be awarded any other and further relief as to the Court seems just and proper.

COLLEY AND SAKUMA,

By /s/ NATHANIEL S. COLLEY,
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed September 27, 1956.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, Bruce G. Barber, District Director, Immigration and Naturalization Service, and answers the complaint herein as follows:

I.

Defendant admits the allegations of Paragraphs III, VI and VII.

II.

Answering Paragraph IV, defendant admits that plaintiff last entered the United States at Baltimore, Maryland, on April 25, 1923, as a deserting seaman, and that he claims to be a native of Afghanistan. The record of the Immigration and Naturalization Service hearings conducted with regard to the plaintiff do not support the allegation that he does not read, write or speak the English language well. Said allegation is therefore denied. Plaintiff was convicted on January 25, 1952, in the United States District Court for the Northern District of California of two violations of Title 26 U.S.C. 145(b). Count One of the indictment charged that plaintiff wilfully and knowingly attempted to defeat and evade income taxes due for the year 1946 by understating his income, and Count Two charged that he wilfully and knowingly attempted to defeat and evade income taxes due for the year 1947 by understating his income. Plaintiff was sentenced on Count One to 18 months imprisonment,

and on Count Two to pay a fine of $2,500, with five years probation, to become effective after his release from confinement on Count One. Defendant alleges that the crimes for which plaintiff was indicted and convicted as a matter of law involved moral turpitude and the facts and alleged facts and circumstances surrounding his offenses are immaterial.

III.

The allegations of Paragraph V are not of fact, but state a conclusion of law with which defendant disagrees.

IV.

Answering Paragraph VIII, defendant alleges that he will perform his duties as District Director of the Immigration and Naturalization Service in accordance with the law and regulations applicable thereto, but that pending the judgment of this Court upon the complaint filed herein, the deportation of the plaintiff will be withheld.

V.

Answering Paragraph IX, defendant alleges that the facts pertaining to the final order of deportation outstanding against the plaintiff are to be determined solely and only from the certified record of the Immigration and Naturalization Service which will be offered into evidence as an exhibit; that two issues of law are raised by plaintiff in his complaint herein: (1) That the two crimes for the commission of which he was indicted and convicted

do not involve moral turpitude, and (2) that because the two crimes were joined in one indictment as two separate counts that they do not represent two distinct crimes within the meaning of Section 241(a)(4) of the Immigration and Nationality Act of 1952.

Wherefore, defendant prays the judgment of this Court discharging the Order to Show Cause denying the relief prayed for by the plaintiff and dismissing the complaint and action herein.

LLOYD H. BURKE,
United States Attorney;

By /s/ CHARLES ELMER COLLETT,
Assistant United States
Attorney.

[Endorsed]: Filed October 10, 1956.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

By this action plaintiff, a resident alien, seeks a judicial declaration that a deportation order issued by defendant in June, 1956, is invalid. All administrative remedies having been exhausted, jurisdiction in this Court obtains under the provisions of § 10 of the Administrative Procedure Act (5 U.S.C.A., § 1009).

The deportation order was based on the provisions of Title 8, U.S.C.A., § 1251(a)(4),[1] plaintiff having been convicted in 1952 on two counts of income tax evasion under § 145(b) of the Internal Revenue Code of 1939.[2]

The order of deportation can be sustained only if it is determined that:

---

[1]Title 8, U.S.C.A., § 1251(a)(4) provides:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(4) Is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;"

---

[2]Title 26, U.S.C.A., § 145(b) (1939 Code), provides:

"Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

(1) The crime of wilfully attempting to evade income tax liability under § 145(b), supra, is a crime involving "moral turpitude," and

(2) Conviction at a single trial on two separate counts of income tax evasion under § 145(b), supra, was in fact a conviction of two crimes "not arising out of a single scheme of criminal misconduct."

Before discussing the question of "moral turpitude," the Court feels obliged first to examine the two offenses of which plaintiff was convicted (i.e., wilfully attempting to evade the payment of income tax for each of the years 1946 and 1947), and determine whether such offenses arose out of a "single scheme of criminal misconduct."

No authorities having been cited by the parties, and none having been found, to assist in interpreting the language in § 1251(a)(4), supra, the question appears to be one of first impression. In 1952 Congress wrought a change in the definition of a deportable convicted alien. Prior to the 1952 Act, under the applicable provisions of former § 155(a) (Title 8, U.S.C.A.), in order to be deportable for crimes involving moral turpitude committed at any time after entry, the alien must have been twice sentenced to a term of imprisonment in excess of one year. This section, as it thus read, was interpreted to mean that the alien must have been convicted and sentenced on two separate occasions, and not in one trial (Fong Haw Tan vs. Phelan, 333 U. S. 6; see also Jordan vs. DeGeorge, 341 U. S.

223). However, in 1952, for reasons not made clear in the bill itself, or even in the Committee reports,[3] Congress modified the language of this section to such an extent that an alien becomes deportable if he is merely twice convicted of crimes involving moral turpitude, whether the two convictions are in one trial or separate trials, and whether the alien is sentenced to a term of imprisonment as a result of such convictions. The language of the modification with which, as has already been noted, we are here concerned is the proviso that the two convictions cannot be for crimes "arising out of a single scheme of criminal misconduct."

Plaintiff contends that two violations of § 145(b) of the Internal Revenue Code of 1939, committed in consecutive years, manifests but a "single scheme"; the single scheme being, "to evade and defeat the federal income tax." While it is true that many separate offenses may be committed by an individual in the furtherance of some subjective predelection amounting to a general scheme of criminality, to hold that a mere lurking proclivity to commit certain kinds of offenses manifests a "single scheme" within the meaning of § 1251(a)(4), would be, in effect, to render nugatory a declared public policy to deport aliens who are convicted of two crimes involving moral turpitude. A

[3]Senate Report No. 1137, Jan. 29, 1952 (S. 2550); House Report No. 1365, Feb. 14, 1952 (H.R. 5678), and Conference Report No. 2096, June 9, 1952 (H.R. 5678).

more reasonable and rational interpretation of this language is that Congress contemplated nothing more than those situations where an alien's conviction is based on a multiple count indictment charging him with separate crimes, which were committed by the doing of a single act or a series of simultaneous or closely related and closely connected acts.[4]

The law is well established that a wilful attempt to evade the federal income tax under § 145(b) is a separate crime for each year such an attempt is made, and the offense is not a continuing one (Norwitt vs. United States, 195 F. 2d 127, cert. denied 344 U. S. 817). Plaintiff, in the case at bar, was convicted of wilfully attempting to evade the payment of income tax for the year 1946, and for committing the same offense twelve months later in connection with income tax due for 1947. Plaintiff's hidden desire to defraud the government of its taxes does not render the two separate acts, which he committed in furtherance of that desire, part of

[4]E.g.: Title 18, U.S.C.A., § 371 (conspiracy and the doing of an overt act); and see also 18, U.S.C.A., § 487 (counterfeiting, making and possessing dies); § 500 (forging and uttering a postal money order); § 641 (theft and possession of government property); and § 659 (theft and possession from an interstate shipment).

Although the Court is not bound by the statutory interpretations of the Board of Immigration Appeals, that body has placed a similar interpretation on this language. See: B. I. A., In the Matter of D——, Interim Decision No. 583, April 7, 1954; and Auerbach, Immigration Laws of the United States (1955), at page 132, et seq.

a "single scheme" within the reasonable and rational meaning of the phrase in § 1251(a)(4), being here considered. The Court is of the view that these two offenses more logically imply that plaintiff, in March of 1948 (when the 1947 tax was due), decided that his apparent success twelve months earlier warranted repetition. Two such separate and unrelated acts do not amount to a "single scheme of criminal misconduct." To reach a contrary conclusion would require the Court to assume that in 1947 (when the 1946 taxes were payable), defendant had then a fixed intention to commit another violation in 1948 as a part of a single scheme, and this frankly taxes the Court's credulity beyond the pale of reason.

Numerous attempts have been made to define what crimes involve "moral turpitude" for the purposes of determining whether an alien falls within the deportable classification set forth in § 1251(a)(4) of the 1952 Act, and § 155(a) of the prior act. Unquestionably the most helpful definition yet offered was given in the case of Jordan vs. DeGeorge, supra, wherein it was stated (p. 232):

> "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. * * * Fraud is the touchstone by which this case should be judged. The phrase 'crime in-

volving moral turpitude' has without exception been construed to embrace fraudulent conduct."

The final question to be resolved is whether a violation of § 145(b) of the Internal Revenue Code of 1939 is a crime involving moral turpitude, as that phrase has been defined above by the Supreme Court.

Section 145(b) speaks in terms of "wilfulness," which has been defined by the Courts as meaning "bad faith," "bad purpose," "evil motive" and "tax evasion motive" (United States vs. Murdock, 290 U. S. 389; Spies vs. United States, 317 U. S. 492; Wardlaw vs. United States, 203 F. 2d 884). With these definitions in mind, the Courts have, with apparent unanimity, held that in order for a conviction under § 145(b) to stand, the Government is required to prove that the evading taxpayer had a specific intent to evade taxation, amounting to an intent to defraud the United States.[3] Fraud is so

[3] United States vs. Rosenblum, 176 F. 2d 321, cert. denied 338 U. S. 893; United States vs. Raub, 177 F. 2d 312; Norwitt vs. United States, supra [main text]; Wardlaw vs. United States, 203 F. 2d 884; Bloch vs. United States, 221 F. 2d 786; Legatos vs. United States, 222 F. 2d 678; and United States vs. Clark, 123 F. Supp. 608. Cf. Sierra vs. United States, 351 U. S. 131, at p. 134.

Plaintiff contends that the case of United States vs. Scharton, 285 U. S. 518, is determinative of the issue of whether fraud is an element in § 145(b). A close examination of that case, however, discloses that the Supreme Court decided only that in order for the government to avail itself of the 6-year

inextricably woven into the term, "wilfully" as it is employed in § 145(b), that it is clearly an ingredient of the offense proscribed by that section. Only by creating unwarranted semantic distinctions could a contrary conclusion be reached.

Similar tax offenses have been held to involve "moral turpitude" (Jordan vs. DeGeorge, supra; United States, ex rel., Berlandi vs. Reimer, 113 F. 2d 429; and Maita vs. Haff, 116 F. 2d 337),[6] and the Court is of the opinion that the crime set forth in § 145(b) squarely falls within the definition of moral turpitude laid down by the Supreme Court in Jordan vs. DeGeorge, supra. If proof tantamount to a showing of a specific intent to defraud is required to convict a man under § 145(b), then it cannot be said with any degree of consistency and logic that the crime involves no fraud for the purposes of deportation.

---

statute of limitations for fraud actions, the statute under which it was prosecuting must be specifically couched in terms of fraud. Moreover, the recent case of Berra vs. United States, supra, sheds considerable doubt on plaintiff's interpretation of the Scharton case.

---

[6]The Court does not find the case of United States vs. Carrollo, 30 F. Supp. 3, persuasive on this point in view of the conclusion reached by the Supreme Court in Jordan vs. DeGeorge, supra. The question of fraud as an element of moral turpitude was not reached in the Carrollo case, and the holding that income tax evasion did not involve moral turpitude was no more than a dictum.

It Is, Therefore, Ordered that plaintiff take nothing by his complaint on file in this action and that no order of restraint be issued against defendant in this case.

It Is Further Ordered that plaintiff's prayer that the order of deportation issued by defendant against plaintiff be declared null and void be, and it is, hereby denied.

And It Is Further Ordered that the defendant prepare findings of fact and conclusions of law, a form of judgment, and any other required documents, and lodge them with the Clerk of this Court pursuant to the applicable laws and the rules of this Court.

Dated: January 31, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed January 31, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above action having come on regularly for hearing before the Honorable Sherrill Halbert, Judge of the above-entitled Court, Colley and Sakuma, attorneys at law, appearing for plaintiff, and Lloyd H. Burke, United States Attorney, and

Charles Elmer Collett, Assistant United States Attorney, appearing for defendant, and the matter having been argued, briefed and submitted, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

I.

Plaintiff is an alien who last entered the United States as a deserting seaman at Baltimore, Maryland, on or about April 25, 1923.

II.

On January 25, 1952, plaintiff was convicted in the United States District Court for the Northern District of California on an indictment charging him on two counts with violations of Title 26, U.S.C., 145(b); Count One charged that plaintiff wilfully and knowingly attempted to defeat and evade income taxes due for the year 1946 by understating his income; Count Two charged that plaintiff wilfully and knowingly attempted to defeat and evade income taxes due for the year 1947 by understating his income.

III.

Plaintiff was sentenced on Count One to 18 months imprisonment and on Count Two, to pay a fine of $2,500 with five years probation.

IV.

Deportation proceedings were instituted against plaintiff, and upon the exhaustion of all adminis-

trative remedies plaintiff was ordered deported from the United States on the charge of having after entry been convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct.

V.

Plaintiff by his action herein seeks review of the final order of deportation.

VI.

Upon review of the certified record of the administrative proceedings, the Court finds that plaintiff was given a fair hearing and was afforded due process, and that the decision of deportability is based upon reasonable substantial and probative evidence.

Conclusions of Law

I.

Plaintiff after entry in the United States was convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

II.

Plaintiff is an alien illegally in the United States.

III.

The order of deportation issued by defendant against plaintiff is valid and lawful.

IV.

Plaintiff is entitled to no relief by his complaint herein.

Let judgment be entered accordingly.

Dated: February 19th, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

Affidavit of mail attached.

Lodged February 12, 1957.

[Endorsed]: Filed February 19, 1957.

In the United States District Court for the Northern District of California, Northern Division

Civil No. 7447

CHANAN DIN KHAN,

Plaintiff,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Defendant.

JUDGMENT

The above matter having been heard by the Honorable Sherrill Halbert, Judge of the above-entitled Court, and the Court having heretofore filed its Findings of Fact and Conclusions of Law, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff is entitled to no relief by his complaint herein: that said complaint and action be and the

same are hereby dismissed, and that defendant have judgment for his costs in the sum of $20.00.

Dated: February 19, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

Affidavit of service by mail attached.

Lodged February 12, 1957.

[Endorsed]: Filed February 19, 1957.

Entered February 20, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Chanan Din Khan, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on February 20, 1957.

Dated: February 28, 1957.

COLLEY AND SAKUMA,

By /s/ NATHANIEL S. COLLEY,
Attorneys for Appellant.

[Endorsed]: Filed February 28, 1957.

[Title of District Court and Cause.]

BOND

Know All Men by These Presents, That Chanan Din Khan, as principal and Firemans Fund Indemnity organized and existing under and by virtue of the laws of the State of California, and duly licensed to transact a general surety business in the State of California, as surety are held and firmly bound unto Defendant, Bruce G. Barber, District Director United States Immigration and Naturalization Service, his executors, administrators, or assigns, in the sum of Two Hundred Fifty ($250.00) dollars, lawful money of the United States of America, to be paid unto the said Defendant, Bruce G. Barber, District Director, United States Immigration and Naturalization Service, his executors, administrators, or assigns, to which payment well and truly to be made, and do bind and oblige their heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with seal and dated this 11th day of March, A.D. 1957.

Whereas, the above-named Plaintiff, Chanan Din Khan, heretofore a citizen of the State of Afghanistan, commenced an action in the United States District Court, in and for the Northern District of California, Northern Division, against the said Bruce G. Barber, District Director United States Immigration and Naturalization Service.

State of California,
County of Sacramento—ss.

On this 11th day of March, 1957, before me, F. H. Wittpen, a Notary Public in and for said Sacramento County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared Austin D. Vance, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company, and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of Sacramento, the day and year in this certificate first above written.

F. H. WITTPEN,
Notary Public in and for the County of Sacramento, State of California.

My commission expires April 14, 1957.

[Endorsed]: Filed March 11, 1957.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET APPEAL

It Is Hereby Ordered that the time within which to docket the appeal herein in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 9th day of May, 1957.

Dated: April 9th, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed April 9, 1957.

[Title of District Court and Cause.]

NOTICE TO PREPARE RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

An appeal having been taken herein, it is hereby requested that you prepare the record on appeal. Such record shall include the complaint, answer thereto, the memorandum opinion of the Court, the Findings of Fact and Conclusions of Law, the Judgment entered herein, the Notice of Entry of Judgment, the Notice of Appeal, this notice and a transcript of all oral stipulations or agreements entered into by the parties in open Court.

Dated: February 28, 1957.

COLLEY AND SAKUMA,

By /s/ NATHANIEL S. COLLEY,
Attorneys for Appellant.

[Endorsed]: Filed February 28, 1957.

[Title of District Court and Cause.]

ORDER EXTENDING TIME
TO DOCKET APPEAL

It Is Hereby Ordered that the time within which to docket the appeal herein in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 6th day of June, 1957.

Dated May 9th, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed May 9, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of

California, do hereby certify that the foregoing and accompanying documents listed below are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein.

1. Complaint.
2. Answer.
3. Memorandum and Order.
4. Findings of Fact and Conclusions of Law.
5. Judgment.
6. Appeal, Notice of.
7. Cost bond on appeal.
8. Order Extending Time to Docket Appeal.
9. Order Extending Time to Docket Appeal.
10. Notice to Prepare Record on Appeal.

In Witness Whereof, I have hereunto set my hand and the seal of said Court this 5th day of June, 1957.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Endorsed]: No. 15584. United States Court of Appeals for the Ninth Circuit. Chanan Din Khan, Appellant, vs. Bruce G. Barber, District Director, United States Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed June 6, 1957.

Docketed June 17, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Case No. 15584

CHANAN DIN KHAN,

Appellant,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Respondent.

APPELLANT'S STATEMENT OF POINTS RELIED UPON

Appellant's main contentions are as follows:

1. That since he was convicted at a single trial on two counts of income tax invasion, his crime was not "two crimes not involving a single scheme of criminal misconduct," within the meaning of the Immigration and Nationality Act. This is true because evidence of tax evasion in one year would be admissible in a charge of evasion during the next year. The theory of admissibility in such a case is that the offenses were part of a single plan, scheme or design.

2. That income tax evasion (26 USC 145(b)) is not a crime involving moral turpitude within the meaning of the Immigration and Nationality Act. One may be guilty of violation of the section

through mere negligence. See: Remer vs. U. S. 205 Fed. 2d 277.

3. Unless the offense necessarily, by its very nature, involve fraud or moral turpitude, no deportation will lie. U. S. ex rel. Mylius vs. Uhl, 203 Fed, 152; Giglio vs. Neely, 208 Fed. 2d. 337. While it may be true that evasion of some tax laws may involve moral turpitude, violation of Section 145(b) of the Internal Revenue Code is not such a law. U. S. vs. Scharton, 285 U. S. 518.

COLLEY AND SAKUMA.

By /s/ NATHANIEL S. COLLEY.

[Endorsed]: Filed June 21, 1957.

LIBRARY
SUPREME COURT, U. S.
MAY 23 19
JOHN T. FEY, Clerk

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 1018

CHANAN DON KHAN,
Petitioner,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,
Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

NATHANIEL S. COLLEY,
621 P Street, Sacramento, California,
Attorney for Petitioner.

Subject Index

	Page
Opinions below	2
Jurisdiction	2
Questions presented for review	2
Federal question	3
Grounds for decision below	3
Reason for allowance of the writ	5
Facts of the case	6
Argument	7
A. Petitioner is not subject to deportation under the terms and provisions of Title 8, U.S.C.A., Section 1251(a)(4) (the Immigration and Nationality Act)	7
B. Plaintiff's conduct involved a single scheme or plan	7
C. Income tax evasion does not necessarily involve moral turpitude within the meaning of the Immigration and Nationality Act	8
D. Section 241(a)(4) of the Immigration and Nationality Act when taken with Section 145(b) Internal Revenue Code does not afford a sufficiently definite standard upon which to base a deportation	11
Conclusion	12

Table of Authorities Cited

Cases

	Pages
Connally v. General Construction Company, 269 U.S. 385	12
Fong Hau Tan v. Phelan, 333 U.S. 6, 92 L. ed. 433	11
Remmer v. U. S., 205 Fed. 2d 277	9
Shaughnessy v. Pedreiro, 349 U.S. 48	9

Pages

United States v. Carrollo, 30 Fed. Supp. 3 ..... 5, 10
United States v. Corsi, 63 Fed. 2d 757 ..... 5, 10
United States v. Day, 51 Fed. 2d 1022 ..... 5, 10
United States v. McCandless, 28 Fed. 2d 287 ..... 5, 10
United States v. Neely, 208 Fed. 2d 337 .....5, 9, 10
United States v. Scharton, 285 U.S. 518 ..... 5, 11
United States v. Sullivan, 93 Fed. 2d 79 8
United States ex rel. McKenzie v. Savoretti, 200 Fed. 546 .. 5, 10
United States ex rel. Mylius v. Uhl, 203 Fed. 152 (1913) .. 9

Statutes

Internal Revenue Code, 1926, Section 1114(b) 11

Internal Revenue Code, 1939, Section 145(b) 3, 5, 9, 10, 11

Immigration and Nationality Act:
Section 214 6
Section 1251(a)(3) 7
Section 1251(a)(4) (Title 8, U.S.C.A., Section 1251(a)(4)) 2, 3, 7, 8, 10, 11

5 U.S.C., Section 1009 3

28 U.S.C. 1291 2

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No.

CHANAN DIN KHAN,
Petitioner,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

On March 11, 1958 the United States Court of Appeals for the Ninth Circuit made and entered its order affirming the judgment of the United States District Court for the Northern District of California, Northern Division, that petitioner be deported.

OPINIONS BELOW.

The opinions of the United States District Court (147 F. Sup. 771) and the United States Court of Appeals for the Ninth Circuit are set out in the appendix affixed hereto.

JURISDICTION.

The judgment of the United States Court of Appeals for the Ninth Circuit, entered on March 11, 1958 is now final for all purposes, no petition for rehearing having been filed. The statutory provision conferring jurisdiction upon this Court to review the judgment of the United States Court of Appeals for the Ninth Circuit are as follows: 28 U.S.C. 1291; *Shaughnessy v. Pedreiro*, 349 U.S. 48.

QUESTIONS PRESENTED FOR REVIEW.

This appeal presents four primary questions. They are as follows:

(1) Whether or not an alien convicted prior to the passage of the Walter-McCarran Immigration Act is subject to deportation under Section 1251(a)(4) of the Act. In other words, does Section 1251(a)(4) of the Act, using the language "is convicted" have a retroactive effect?

(2) Whether the conviction of an alien at a trial of two counts of income tax evasion repre-

sents two crimes "not involving a single scheme of criminal misconduct".

(3) Whether income tax evasion is a crime involving moral turpitude within the meaning of the Immigration and Nationality Act.

(4) Whether Section 241(a)(4) of the Immigration and Nationality Act when taken with Section 145(b) Internal Revenue Code affords a sufficiently definite standard upon which to base a deportation.

FEDERAL QUESTION.

There can be no doubt that only federal questions are raised on this appeal, since it involves action by a federal agency and interpretations of federal statutes. (Title 8, U.S.C.A. 1251(a)(4); 5 U.S.C., Section 1009.)

GROUNDS FOR DECISION BELOW.

The Court below decided that Section 1251(a)(4) (Title 8, U.S.C.A. 1251(a)(4)) of the Nationality and Immigration Act must be given an interpretation which will give it retroactive effect. In other words, the ruling of the Court was that even though Congress used the language "is convicted" the statute nevertheless was meant to have retroactive effect and deportations were to be made against an alien who committed no offense after the passage of the Act and was not even convicted after the passage of the Act. We sub-

mit that this is a narrow and unnecessarily severe interpretation of the Act. It would also appear that this interpretation would make the statute void for vagueness under the rules heretofore mentioned. This would appear particularly true since the requirement of clarity in order to avoid being struck down for vagueness as applied to criminal statutes is that the statute must give notice in advance. We submit that if it is interpreted as the Court urges here, no notice in advance is given and the statute is therefore void for vagueness.

The Court below also reasoned that since the conviction of petitioner at one trial of tax evasion for two separate years did not necessarily involve a single scheme of criminal misconduct, it will be inferred that it did not. In other words, the essence of the decision in this regard seems to be that the burden is upon petitioner to prove, in order to escape deportation, that his crime involved a single scheme of criminal misconduct. It would appear to us that since the rules of criminal law will be applied to deportation due to the harsh nature of deportation, the burden should be upon the government to prove that the crime did not arise out of a single scheme of criminal misconduct. In other words, the burden of proving himself non-deportable should not be shifted to petitioner, but rather the government should show that he is a person subject to deportation.

The Court below, basing its decision upon an earlier case decided by it, made short shift of petitioner's claim that before a deportation will lie it must be shown that the crime charged necessarily involves

moral turpitude. We submit that our interpretation is the proper and logical one, and unless it can be said that all convictions under Section 145(b) necessarily involve moral turpitude no deportation should lie.

REASON FOR ALLOWANCE OF THE WRIT.

1. The Court below has decided an important national question on points not heretofore ruled upon by this Court, but which should be ruled upon by this Court.

So far as we can ascertain this Court has never squarely decided the question of the meaning of the phrase "not arising out of a single scheme of criminal misconduct," nor has this Court decided the question as to whether income tax evasion necessarily involves moral turpitude.

2. The decision of the Circuit Court below is in conflict with the decisions of the Court in the following cases; *U. S. v. Neely*, infra; *U. S. v. Corsi*, infra; *U. S. v. Day*, infra; *U. S. v. McCandless*, infra; *U. S. ex rel. McKenzie v. Savoretti*, 200 Fed. 546; and *U. S. v. Carrollo*, 30 Fed. Supp. 3.

This conflict in the lower Federal Courts could be resolved by a clear-cut decision of this Court.

3. The decision below, in part at least, seems to be in conflict with the decision of this Court in *U. S. v. Scharton*, infra.

FACTS OF THE CASE.

The essential facts are set out in the complaint affixed hereto as an appendix, and are not in dispute. Plaintiff is an alien, having entered this country from Afghanistan in 1923. On August 29, 1949 his status in this country was adjusted and he was granted a certificate of registry. On January 4, 1954 this certificate was rescinded because in 1952 Plaintiff had been convicted of income tax evasion in the years 1946 and 1947.

Nothing else was done in the matter until May 2, 1956 when Respondent served an order to show cause and notice of hearing upon Petitioner under the provisions of Section 214 of the Immigration and Nationality Act. On June 29, 1956 the hearing on the order to show cause was held at San Francisco, California before Monroe Kroll, Special Inquiry Officer of the United States Department of Justice, Immigration and Naturalization Service. Mr. Kroll ordered Plaintiff deported.

An appeal was taken from this order to the Board of Immigration Appeals, which body, on August 31, 1956 upheld the deportation order. This action for judicial relief followed. The District Court ruled in favor of deportation; the Circuit Court affirmed that judgment.

ARGUMENT.

A. PETITIONER IS NOT SUBJECT TO DEPORTATION UNDER THE TERMS AND PROVISIONS OF TITLE 8, U.S.C.A., SECTION 1251 (a)(4) (THE IMMIGRATION AND NATIONALITY ACT).

The pertinent section of the Act reads: "Any alien shall be deported who at any time after entry is convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct."

This Act was passed on June 27, 1952 and Plaintiff was tried and convicted in January of 1952. It is submitted that if it had been the intent of Congress to make Section 1251 (a)(4) of the Act to have retroactive in effect Congress would not have used the language "is convicted". "Is convicted" can only refer to events occurring after the passage of the Act. The argument in this connection is supported and strengthened by the fact that when Congress wanted Section 1251 (a)(3) of the Act to have retroactive effect it added the words "is hereafter convicted." This clearly means that it was the intent of Congress to deport certain aliens who were members of certain classes irrespective of a time of the commission of the act, but there was no intent to deport all who had already been convicted of certain crimes but did no wrong after the passage of the Act.

B. PLAINTIFF'S CONDUCT INVOLVED A SINGLE SCHEME OR PLAN.

It is conceded that the very language of Section 1251 (a)(4) of the Immigration and Nationality Act

makes it immaterial whether the two alleged crimes resulted in conviction at a single trial. The question is whether the two counts in the indictment were the result of a single scheme of criminal misconduct. The lawmakers must have anticipated the possibility of trials on a multiple count indictment, some involving a single scheme and others not. Unless we take this view, the exception in 1251 (a)(4) reading: "Not arising out of a single scheme of criminal misconduct" would be meaningless. In other words, Congress foresaw that some such indictments would involve a single scheme of criminal misconduct while others would not. It appears clear that income tax evasion for one year could be followed by tax evasion in a subsequent year all pursuant to a single scheme of criminal misconduct. This view is strengthened by the fact that evidence of tax evasion during one year is admissible to prove the evasion for the prior year.

In the case of *United States v. Sullivan*, 93 Fed. 2d 79, it was specifically held that evidence of tax evasion in one year is competent to prove tax evasion in a later year.

C. INCOME TAX EVASION DOES NOT NECESSARILY INVOLVE MORAL TURPITUDE WITHIN THE MEANING OF THE IMMIGRATION AND NATIONALITY ACT.

It has never been easy to determine what is a crime involving moral turpitude. The Senate Committee in drafting the Immigration and Nationality Act of 1952 faced the problem of deciding the meaning of the

term. It recognized that many classes of crimes involve moral turpitude while others do not. It referred specifically to the case of *U. S. ex rel. Mylius v. Uhl*, 203 Fed. 152 (1913) and by implication accepted the definition given therein. The definition there given was that the act must be one showing the perpetrator to have personal depravity and baseness. It was said that the crime must by necessity involve moral turpitude. In other words, all who commit the crime must be presumed to be vile, base and depraved.

The case in question involved criminal libel. In analyzing this specific crime the Court said that there are times when criminal libel might show such depravity as to involve moral turpitude, but went on to point out that editors have been held guilty even though they had no personal relationship with the published matter. Since some libels would involve moral turpitude and others would not it could not be said that the "crime in its very nature, necessarily involves moral turpitude".

See also: *U. S. v. Neely*, 208 Fed. 2d 337.

A taxpayer may be guilty of a violation of Section 145 (b) of the Internal Revenue Code without personally preparing the return, or in fact having anything to do with it except furnishing certain figures to his bookkeeper. The taxpayer need not be depraved, immoral or base in order to be convicted. He can simply be negligent, or worse still, too trusting in the belief that others will properly keep his records, make his return, and pay his tax. *Remmer v. U. S.*, 205 Fed. 2d 277.

The test seems to be that if acts of base or depravity are necessary for conviction, then the crime necessarily involves moral turpitude. It is the inherent nature of the offense which governs. *U. S. ex rel. McKenzie v. Savoretti*, 200 Fed. 546; *U. S. v. Carrollo*, 30 Fed. Supp. involved an attempt to evade a federal tax. There the Court said:

> "We are not prepared to rule that an attempt to evade payment of a tax due the nation or the commonwealth, wrong as it is, and as unlawful as it is, is an act evidencing baseness, vileness or depravity."

The Court went on to say that the answer must be found in the essential nature of the crime, and not in the skill of prosecutors in drafting pleadings.

It is quite possible that some income tax evasion cases, because of surrounding facts and circumstances, may involve moral turpitude. Before, however, a deportation under Section 1251 (a)(4), Immigration and Nationality Act may result from conviction of a crime involving moral turpitude, the crime by its very nature must involve moral turpitude and everyone convicted of that crime must be guilty of moral turpitude. This was the holding in *United States v. Neely*, supra: *United States v. Corsi*, 63 Fed. 2d 757; *United States v. Day*, 51 Fed. 2d 1022; *United States v. McCandless*, 28 Fed. 2d 287.

Since the crimes of which Petitioner was convicted involved violation of Section 145 (b) U.S. Internal Revenue Code, it becomes pertinent to explore further the question as to whether a violation of that law

always involves moral turpitude. We contend that it is the conclusively settled law of the land that a violation of Section 145 (b) United States Internal Revenue Code does not necessarily involve a moral turpitude. *United States v. Scharton*, 285 U.S. 518. Scharton was indicted under Section 1114 (b) of the 1926 Internal Revenue Code, but the District Court quashed the indictment on the ground that fraud was not an essential element of the crime, and for that reason the longer statute of limitations provided in the fraud section of the statute did not apply. There, as here, the Government contended that fraud is implicit in the concept of evading or defeating a tax. This Court rejected that contention and held that the six-year statute of limitation applied only in cases "in which defrauding or an attempt to defraud the United States is an ingredient under the statute defining the offense." The judgment quashing the indictment was affirmed. Neither the District Court nor the Circuit Court of Appeals has offered anything to distinguish the *Scharton* case from the one at bar.

D. SECTION 241 (a)(4) OF THE IMMIGRATION AND NATIONALITY ACT WHEN TAKEN WITH SECTION 145 (b) INTERNAL REVENUE CODE DOES NOT AFFORD A SUFFICIENTLY DEFINITE STANDARD UPON WHICH TO BASE A DEPORTATION.

Deportation is such a harsh and drastic penalty that it will be treated as a forfeiture or penalty, and the rule applicable to testing criminal statutes for vagueness will be applied. *Fong Haw Tan v. Phelan*,

333 U.S. 6, 92 L. ed. 433. The test is whether the statute conveys sufficiently definite warning to the actor as to the probable consequences of his act. *Connally v. General Construction Company*, 269 U.S. 385. The very word "warning" denotes notice in advance. How could appellant in this case have known in advance that he would be charged and deported for income tax evasion if the law under which he is deported was not even enacted when he committed the crime, nor when he was convicted thereof?

CONCLUSION.

We are not waving the flag or pleading for sympathy when we respectfully repeat the truism that ours is a nation made up of immigrants and their offsprings. Our country was founded and largely made great by the infusion into the main stream of our national life a steady flow of men and women from the four corners of the earth. Ours is a fertile, prosperous and great land—in fact the greatest—it is truly "The land The Lord remembers".

But what has this to do with Chanan Din Khan? It has much to do with him. This Court is called upon to interpret a section of our immigration laws and a section of our tax laws as it relates thereto. In making these interpretations the Court should consider the fact that for nearly two-hundred years ours has been the "open door", and we have entreated the world to send us its teeming millions. We should not now so technically and restrictively interpret our

laws so as to fashion reasons and apparent justification for closing our open door, or for sending back those who, though they have spent their useful and productive years with us, have erred in a fashion rather common to the native-born. For the alien we say the usual penalties of fine and imprisonment are not cruel enough; we must now banish him. This is hardly in keeping with the American ideal of fair play for all, regardless of nationality or place of birth. The judgment below should be reversed.

Dated, Sacramento, California,
April 30, 1958.

Respectfully submitted,
/s/ NATHANIEL S. COLLEY,
Attorney for Petitioner.

(Appendices A, B and C Follow.)

Appendix A

[Title of District Court and Cause.] (157 Fed. Supp. 771.)

MEMORANDUM AND ORDER

By this action plaintiff, a resident alien, seeks a judicial declaration that a deportation order issued by defendant in June, 1956, is invalid. All administrative remedies having been exhausted, jurisdiction in this Court obtains under the provisions of § 10 of the Administrative Procedure Act (5 U.S.C.A., § 1009).

The deportation order was based on the provisions of Title 8, U.S.C.A., § 1251(a)(4),[1] plaintiff having been convicted in 1952 on two counts of income tax evasion under § 145(b) of the Internal Revenue Code of 1939.[2]

---

[1]Title 8, U.S.C.A., § 1251(a)(4) provides:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(4) Is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;"

[2]Title 26, U.S.C.A., § 145(b) (1939 Code), provides:

"Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

The order of deportation can be sustained only if it is determined that:

(1) The crime of wilfully attempting to evade income tax liability under §145(b), supra, is a crime involving "moral turpitude," and

(2) Conviction at a single trial on two separate counts of income tax evasion under § 145(b), supra, was in fact a conviction of two crimes "not arising out of a single scheme of criminal misconduct."

Before discussing the question of "moral turpitude," the Court feels obliged first to examine the two offenses of which plaintiff was convicted (i.e., wilfully attempting to evade the payment of income tax for each of the years 1946 and 1947), and determine whether such offenses arose out of a "single scheme of criminal misconduct."

No authorities having been cited by the parties, and none having been found, to assist in interpreting the language in § 1251(a)(4), supra, the question appears to be one of first impression. In 1952 Congress wrought a change in the definition of a deportable convicted alien. Prior to the 1952 Act, under the applicable provisions of former § 155(a) (Title 8, U.S.C.A.), in order to be deportable for crimes involving moral turpitude committed at any time after entry, the alien must have been twice sentenced to a term of imprisonment in excess of one year. This section, as it thus read, was interpreted to mean that the alien must have been convicted and sentenced on two separate occasions, and not in one trial (Fong Haw Tan v. Phelan, 333 U.S. 6; see also Jordan v.

DeGeorge, 341 U.S. 223). However, in 1952, for reasons not made clear in the bill itself, or even in the Committee reports,[3] Congress modified the language of this section to such an extent that an alien becomes deportable if he is merely twice convicted of crimes involving moral turpitude, whether the two convictions are in one trial or separate trials, and whether the alien is sentenced to a term of imprisonment as a result of such convictions. The language of the modification with which, as has already been noted, we are here concerned is the proviso that the two convictions cannot be for crimes "arising out of a single scheme of criminal misconduct."

Plaintiff contends that two violations of § 145(b) of the Internal Revenue Code of 1939, committed in consecutive years, manifests but a "single scheme"; the single scheme being, "to evade and defeat the federal income tax." While it is true that many separate offenses may be committed by an individual in the furtherance of some subjective predelict ion amounting to a general scheme of criminality, to hold that a mere lurking propensity to commit certain kinds of offenses manifests a "single scheme" within the meaning of §1251(a)(4), would be, in effect, to render nugatory a declared public policy to deport aliens who are convicted of two crimes involving moral turpitude. A more reasonable and rational interpretation of this language is that Congress contemplated

[3]Senate Report No. 1137, Jan. 29, 1952 (S. 2550); House Report No. 1365, Feb. 14, 1952 (H.R. 5678), and Conference Report No. 2096, June 9, 1952 (H.R. 5678).

nothing more than those situations where an alien's conviction is based on a multiple count indictment charging him with separate crimes, which were committed by the doing of a single act or a series of simultaneous or closely related and closely connected acts.[4]

The law is well established that a wilful attempt to evade the federal income tax under § 145(b) is a separate crime for each year such an attempt is made, and the offense is not a continuing one (Norwitt v. United States, 195 F. 2d 127, cert. denied 344 U.S. 817). Plaintiff, in the case at bar, was convicted of wilfully attempting to evade the payment of income tax for the year 1946, and for committing the same offense twelve months later in connection with income tax due for 1947. Plaintiff's hidden desire to defraud the government of its taxes does not render the two separate acts, which he committed in furtherance of that desire, part of a "single scheme" within the reasonable and rational meaning of the phrase in § 1251(a)(4), being here considered. The Court is of the view that these two offenses more

---

[4]E.g.: Title 18, U.S.C.A., § 371 (conspiracy and the doing of an overt act); and see also 18, U.S.C.A., § 487 (counterfeiting, making and possessing dies); § 500 (forging and uttering a postal money order); § 641 (theft and possession of government property); and § 659 (theft and possession from an interstate shipment).

Although the Court is not bound by the statutory interpretations of the Board of Immigration Appeals, that body has placed a similar interpretation on this language. See: B. I. A., In the Matter of D——, Interim Decision No. 583, April 7, 1954; and Auerbach, Immigration Laws of the United States (1955), at page 132, et seq.

logically imply that plaintiff, in March of 1948 (when the 1947 tax was due), decided that his apparent success twelve months earlier warranted repetition. Two such separate and unrelated acts do not amount to a "single scheme of criminal misconduct." To reach a contrary conclusion would require the Court to assume that in 1947 (when the 1946 taxes were payable), defendant had then a fixed intention to commit another violation in 1948 as a part of a single scheme, and this frankly taxes the Court's credulity beyond the pale of reason.

Numerous attempts have been made to define what crimes involve "moral turpitude" for the purposes of determining whether an alien falls within the deportable classification set forth in § 1251(a)(4) of the 1952 Act, and § 155(a) of the prior act. Unquestionably the most helpful definition yet offered was given in the case of Jordan v. DeGeorge, supra, wherein it was stated (p. 232):

> "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. * * * Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct."

The final question to be resolved is whether a violation of § 145(b) of the Internal Revenue Code of 1939 is a crime involving moral turpitude, as that phrase has been defined above by the Supreme Court.

Section 145(b) speaks in terms of "wilfulness," which has been defined by the Courts as meaning "bad faith," "bad purpose," "evil motive" and "tax evasion motive" (United States v. Murdock, 290 U.S. 389, Spies v. United States, 317 U.S. 492; Wardlaw v. United States, 203 F. 2d 884). With these definitions in mind, the Courts have, with apparent unanimity, held that in order for a conviction under § 145(b) to stand, the Government is required to prove that the evading taxpayer had a specific intent to evade taxation, amounting to an intent to defraud the United States.[5] Fraud is so inextricably woven into the term, "wilfully" as it is employed in § 145 (b), that it is clearly an ingredient of the offense proscribed by that section. Only by creating unwarranted semantic distinctions could a contrary conclusion be reached.

Similar tax offenses have been held to involve "moral turpitude" (Jordan v. DeGeorge, supra; United States, ex rel., Berlandi v. Reimer, 113 F.

---

[5]United States v. Rosenblum, 176 F. 2d 321, cert. denied 338 U.S. 893; United States v. Raub, 177 F. 2d 312; Norwitt v. United States, supra [main text]; Wardlaw v. United States, 203 F. 2d 884; Bloch v. United States, 221 F. 2d 786; Legates v. United States, 222 F. 2d 678; and United States v. Clark, 123 F. Supp. 608. Cf. Berra v. United States, 351 U.S. 131, at p. 134.

Plaintiff contends that the case of United States v. Scharton, 285 U.S. 518, is determinative of the issue of whether fraud is an element in § 145(b). A close examination of that case, however, discloses that the Supreme Court decided only that in order for the government to avail itself of the 6 year statute of limitations for fraud actions, the statute under which it was prosecuting must be specifically couched in terms of fraud. Moreover, the recent case of Berra v. United States, supra, sheds considerable doubt on plaintiff's interpretation of the Scharton case.

2d 429; and Maita v. Haff, 116 F. 2d 337),[6] and the Court is of the opinion that the crime set forth in § 145(b) squarely falls within the definition of moral turpitude laid down by the Supreme Court in Jordan v. DeGeorge, supra. If proof tantamount to a showing of a specific intent to defraud is required to convict a man under § 145(b), then it cannot be said with any degree of consistency and logic that the crime involves no fraud for the purposes of deportation.

It Is, Therefore, Ordered that plaintiff take nothing by his complaint on file in this action and that no order of restraint be issued against defendant in this case.

It Is Further Ordered that plaintiff's prayer that the order of deportation issued by defendant against plaintiff be declared null and void be, and it is, hereby denied.

And It Is Further Ordered that the defendant prepare findings of fact and conclusions of law, a form of judgment, and any other required documents, and lodge them with the Clerk of this Court pursuant to the applicable laws and the rules of this Court.

Dated, January 31, 1957.

/s/ Sherrill Halbert,
United States District Judge.

---

[6]The Court does not find the case of United States v. Carrollo, 30 F. Supp. 3, persuasive on this point in view of the conclusion reached by the Supreme Court in Jordan v. DeGeorge, supra. The question of fraud as an element of moral turpitude was not reached in the Carrollo case, and the holding that income tax evasion did not involve moral turpitude was no more than a dictum.

Appendix B

United States Court of Appeals
for the Ninth Circuit

Chanan Din Khan, Appellant, vs. Bruce G. Barber, District Director United States Immigration and Naturalization Service, Appellee.	No. 15,584 Mar. 11, 1958

Appeal from the United States District Court for the Northern District of California, Northern Division.

Before: Lemmon, Barnes and Hamley, Circuit Judges.

Barnes, Circuit Judge:

This is an action brought by appellant, a citizen of Afghanistan, to review an order of the District Director of the United States Immigration and Naturalization Service deporting him; to declare the same void; and to enjoin the deportation. (5 U.S.C. §1009; 66 Stat. 208.) The District Court had original jurisdiction to review (*Shaughnessy v. Pedreiro*, 349 U.S. 48), and appeal lies here. 28 U.S.C. §1291.

Appellant entered this country unlawfully on April 25th, 1923. On August 28th or 29th, 1949,[1] his status was adjusted and he was granted a Certificate of Registry.

On January 25th, 1952 a jury convicted appellant of both counts of a two count indictment charging him with violation of §145(b) of the Internal Revenue Code of 1939 (26 U.S.C. §145(b)),[2] which charged him with wilfully attempting to defeat and evade his income tax for the years 1946 and 1947 by filing two separate "false and fraudulent income tax returns."

Thereafter appellant's Certificate of Registry adjusting his status was rescinded, and in subsequent proceedings he was found deportable as having been convicted of two crimes involving moral turpitude (8 U.S.C. §1251(a)(4)).[3] The District Court affirmed the order of deportation.

---

[1]Appellant's "Facts" state the date to be August 29, 1949; appellee's, August 28, 1949.

[2]Title 26, U.S.C. §145(b) 1939 Code, provides:

"Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

[3]Title 8, U.S.C. §1251(a)(4) provides:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(4) Is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after

The issue is simple. Was appellant, "after entry, ... convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct?"

Two questions must be answered.

Does conviction of 26 U.S.C. §145(b) involve moral turpitude? If so, does the evidence disclose that the two convictions arise from a single scheme?

This Court has already answered the first question affirmatively where, as here, intent to defraud the government is charged in the indictment and found by the jury.

> "We follow the rule laid down in the De George case (Jordan v. De George, 341 U.S. 223 (1951) and Bloch v. United States, 9 Cir., 221 F.2d 786, 788 (1955)) that an intent to defraud the government is a prerequisite to conviction under Sec. 145(b), and hence a conviction thereof where such fraud is charged in the indictment, is conviction of a crime involving moral turpitude." *Tseung Chu v. Cornell, etc.*, 247 F.2d 929, cert. den. December 9, 1957, ... U.S. .....

This has long been the rule. *Reyes v. Neely*, 5 Cir., 228 F.2d 609 (1956); *Maita v. Hoff*, 9 Cir., 116 F.2d 337 (1940); *Ponzi v. Ward*, 7 F.Supp. 736 (1934).

The second question is slightly more difficult. Appellant points to no facts in the record supporting

---

entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial."

his assumption that the two years of evasion *could* have been the result of a single plan or scheme. In fact, he assumes they were "for purposes of argument only." Fraudulent returns in two different years could, or could not, be one plan or scheme. But we have no facts to prove such a scheme. We have here two different returns involving transactions a year apart. The evidence required on each count was necessarily different, and referred to acts occurring a year apart. This alone, is persuasive that two unrelated crimes were charged. In the absence of all evidence to the contrary, complete crimes committed on differing dates or in differing places are considered separate and different crimes, and support separate charges. Could the defendant in this case urge that there was but one substantive offense charged against him, and hence that the government was required to choose for which year it desired to prosecute defendant? Obviously not.

The mere assumption that evidence of a crime alleged in the first count might be admissible in a prosecution under the second count does not necessarily prove that if two somewhat similar crimes are committed a year apart, they are part of a common scheme.

To reduce appellant's position to an absurdity, he must urge that once an alien is convicted of fraudulently evading an income tax for one year, any subsequent attempt to evade income tax and convictions thereof *must* be presumed part of a single scheme or plan dating back to the original charge. If this were

so, the alien could never be deported, even though the convictions were twenty years apart. We cannot conceive this to be the meaning of the statute.

We fully understand that deportation is a drastic measure, a forfeiture of residence, and a penalty. For that reason, the statutory provision should be generously construed. *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948). But this does not require us to adopt a ridiculous interpretation favoring the alien at all events.

Appellant's proposed "common sense" test is whether evidence of the crime alleged in the first count of the indictment would be admissible in a prosecution under the second count, and "since the theory of admissibility would be whether there was a plan or scheme, if such evidence could be admitted this would show that there was in fact only a single scheme."

Appellant's premise is false. There are theories of admissibility of a previous similar act other than to show a plan or scheme. For example, previous similar acts may be introduced to establish constituent elements of the crime charged, such as intent or motive, and may have no direct or apparent connection. *Fall v. U.S.*, (D.C.) 49 F.2d 566; *Witters v. U.S.*, 106 F.2d 837; *Weiss v. U.S.*, 5 Cir., 122 F.2d 675, 680, 682. Or, they may show malice. *People v. Chaves*, 122 Cal. 134. Or, it may be to show guilty knowledge, *Johnson v. U.S.*, 9 Cir., 22 F.2d 1, and this rule is applicable in tax cases. *Tonkoff v. U.S.*, 7 Cir., 86 F.2d 868, 879.

Finally, appellant urged at oral argument a matter not raised below nor in his brief, namely: that appel-

lant was convicted of income tax evasion in January 1952, and that the Walters-McCarran Immigration Act was passed June 27th, 1952; that the Act cannot be used against him.

8 U.S.C. §1251(a) reads in pertinent part:

> "Any alien . . . shall . . . be deported who . . . (4) . . . at any time after entry *is convicted* of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct . . ." [Emphasis added.]

Appellant urges "is convicted" can only refer to events occurring after passage of the Act, particularly because §1251(a)(3) uses the phrase "hereafter" and §1251(a)(6) uses the phrase "is, or at any time has been, after entry, a member of any" of certain classes of aliens. The very inclusion in §1251(a)(4) of the words "at any time after entry" makes the Act applicable to any conviction occurring after entry. These same words were in the previous 1940 Act,[1] and Congress, examining each section with great care, chose to use the same words, making the penalty applicable to any alien being twice convicted of certain crimes *committed at any time after entry.*

This Court reaffirms the Finding of the District Court that the appellant was given a fair hearing and that the decision of deportability is based upon reasonable, substantial and probative evidence.

The Judgment is *Affirmed.*

(Endorsed:) Opinion. Filed Mar. 11, 1958.
Paul P. O'Brien, Clerk.

---

[1] 8 U.S.C.A. §155(a) (1942 ed.).

Appendix C

United States Court of Appeals
for the Ninth Circuit

Chanan Din Khan, Appellant, vs. Bruce G. Barber, etc.	No. 15,584

JUDGMENT

APPEAL from the United States District Court for the Northern District of California, Northern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered March 11, 1958.

Paul P. O'Brien, Clerk.

LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
JUN 4 1958
JOHN T. FEY, Clerk

No. 1018

In the Supreme Court of the United States

OCTOBER TERM, 1957

CHANAN DIN KHAN, PETITIONER

v.

BRUCE G. BARBER, DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys,
Department of Justice,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 1018

CHANAN DIN KHAN, PETITIONER

v.

BRUCE G. BARBER, DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 34-38; Pet. App. viii-xiii) is reported at 253 F. 2d 547. The opinion of the District Court (Pet. App. i-vii) is reported at 147 F. Supp. 771.

JURISDICTION

The judgment of the Court of Appeals was entered on March 11, 1958 (R. 39; Pet. App. xiv). The petition for a writ of certiorari was filed on May 23, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 241(a)(4) of the Immigration and Nationality Act of 1952 authorizes deportation of petitioner as an alien twice convicted of crimes involving moral turpitude, even though the convictions occurred prior to the date of the 1952 Act.

2. Whether convictions at a single trial, on two separate counts, of attempted income tax evasion for consecutive years are, on this record, for two crimes "not arising out of a single scheme of criminal misconduct" under Section 241(a)(4) of the Act.

3. Whether petitioner's convictions for attempted income tax evasion involve "moral turpitude" to make him deportable under Section 241(a)(4) of the Act.

STATUTES INVOLVED

Section 241 of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 204, 208, 8 U.S.C. 1251, provides as follows:

> (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * * * *
>
> (4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor

and regardless of whether the convictions were in a single trial;

* * * * *

(d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act.

* * * * *

26 U.S.C. (1952 Ed.) 145(b), 52 Stat. 513, provides as follows:

Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

STATEMENT

Petitioner filed in the United States District Court for the Northern District of California an action to set aside a deportation order and to enjoin the respondent

from executing it (R. 3-6). The court ruled that petitioner was entitled to no relief, and dismissed the complaint (R. 20-21). On appeal (R. 21), the judgment was unanimously affirmed (R. 39; Pet. App. xiv).

The pertinent facts may be summarized as follows:

Petitioner, a native of Afghanistan, entered the United States as a deserting seaman at Baltimore, Maryland, on April 25, 1923 (R. 4, 7, 18). On August 28 or 29, 1949, his status was adjusted and he was granted a Certificate of Registry (special inquiry hearing, June 12, 1956, p. 10; Pet. App. ix).

On January 25, 1952, petitioner was convicted by a jury on an indictment charging him in two counts with violations of 26 U.S.C. 145 (*supra*, p. 3). Count 1 charged that petitioner wilfully and knowingly attempted to defeat and evade his 1946 income taxes by filing a false and fraudulent return and understating his income, and count 2 charged a similar violation regarding his 1947 income taxes (R. 7, 18). Count 1 charged a return of $2,352.80 as against the correct amount of $12,433.42, and count 2 charged a return of $157.15 as against the correct amount of $9,319.16 (Ex. 2, special inquiry hearing). Petitioner was sentenced under count 1 to 18 months' imprisonment, and under count 2 to a $2,500 fine, with five years' probation, to become effective after release from confinement under count 1 (R. 7-8, 18).

On January 4, 1954, petitioner's Certificate of Registry adjusting his status was rescinded (special inquiry hearing, June 12, 1956, p. 10; Pet. App. ix). In later deportation proceedings, a special inquiry officer ordered that petitioner be deported to Afghanistan on the ground that his convictions for income tax evasion

established that he had been twice convicted of crimes involving moral turpitude (R. 3-4). The Board of Immigration Appeals affirmed on August 31, 1956.

The District Court upheld the order of deportation (R. 17-21; Pet. App. i-vii). The Court of Appeals, in its opinion affirming the District Court, held that (1) the convictions under 26 U.S.C. 145(b) did involve moral turpitude, since intent to defraud the government had been charged in the indictment and found by the jury; and (2) that petitioner had been "convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct" to make him deportable under Section 241(a)(4) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1251(a)(4) (*supra*, pp. 2-3).

ARGUMENT

1. Petitioner first contends that Section 241(a)(4) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1251(a)(4) (*supra*, pp. 2-3), does not make him subject to deportation, since this statute cannot have any retroactive effect so as to cover his two tax evasion convictions which occurred prior to passage of that Act (Pet. 7).

Section 241(a)(4), however, refers to convictions "any time after entry", language broad enough to cover any convictions occurring after entry, even though prior to the 1952 Act. Moreover Section 241(d) (*supra*, p. 3) specifically makes the deportation provisions of that section applicable to all aliens, even though their entry was prior to the Act, or the facts placing them in the classes enumerated in subsection (a) occurred prior to the date of the Act. This Court has recognized the retroactive effect validly intended

by Congress in Section 241(d) of the 1952 Act. *Lehmann* v. *Carson*, 353 U. S. 685; *Mulcahey* v. *Catalanotte*, 353 U. S. 692; *Marcello* v. *Bonds*, 349 U. S. 302, 314.

2. Petitioner also attacks the ruling that his convictions for income tax evasions for the years 1946 and 1947 were for two crimes "not arising out of a single scheme of criminal misconduct" (Pet. 7-8).

The crime denounced by 26 U.S.C. 145(b) (*supra*, p. 3) is complete when the taxpayer wilfully and knowingly files a false and fraudulent return with intent to defeat or evade any part of the tax due. *Myres* v. *United States*, 174 F. 2d 329, 334 (C. A. 8), certiorari denied, 338 U. S. 849; *United States* v. *Croessant*, 178 F. 2d 96, 98 (C. A. 3), certiorari denied, 339 U. S. 927. An attempt to evade income tax for a given year is a separate and distinct offense from an attempt to evade the tax for a different year. *United States* v. *Sullivan*, 98 F. 2d 79, 80 (C.A. 2); *United States* v. *Johnson*, 123 F. 2d 114, 119 (C.A. 7), reversed on other grounds, 319 U. S. 503. Here, the government showed petitioner's tax evasion convictions for two separate years, which necessarily involved different evidence to prove each offense. The fact that the two offenses followed each other closely in point of time and were of a similar character is immaterial, and does not automatically make them part of a "single scheme". Cf. *Matter of D*, Interim Dec. No. 583, April 7, 1954; *Matter of J*, Interim Dec. No. 656, November 23, 1954. Accordingly, from the record in this case, it would appear that petitioner was convicted of two separate and distinct income tax evasion charges, which were not part of a "single scheme of criminal misconduct."

Petitioner argues that it is *possible* for income tax evasion for two consecutive years to be part of a single scheme. Assuming that possibility, however, petitioner can point to no evidence in the record showing that his was such a case. At the hearing before the special inquiry officer on June 12, 1956 (pp. 12-13), petitioner, after consulting counsel, admitted that he had been convicted of income tax evasion for the years 1946 and 1947, but stated in effect that he did not know if this constituted a single scheme, or if he was deportable because of these convictions. For this reason, the special inquiry officer stated that the hearing would have to be adjourned, so that an examining officer could present the government's case. At the resumption of the hearing on June 29, 1956, the examining officer introduced the tax indictment in two counts and the convictions thereunder as Exhibits 2 and 3. Petitioner's counsel, when asked by the hearing officer whether he had anything to present in the way of evidence or otherwise, replied, "We have no evidence to present" (pp. 15, 16, 17, hearing of June 29, 1956). Thus, petitioner did not choose to adduce any evidence regarding the "single scheme" issue. If there had been evidence available to prove a "single scheme," it was peculiarly within petitioner's knowledge, making it incumbent upon him to adduce it as a defense which would remove his case from the terms of the statute; it was not essential that the prosecution prove a negative proposition, *i.e.*, that a single scheme was not involved with respect to these two particular criminal charges for crimes which are frequently separate. Cf. *Rossi* v. *United States*, 289 U. S. 89, 91.

3. There is likewise no merit to petitioner's contention that his convictions under 26 U.S.C. 145(b) do not necessarily involve "moral turpitude," so as to make him deportable under Section 241(a)(4) of the Act (Pet. 8-11).

The wilfulness required under 26 U.S.C. 145(b) means "evil motive" and "bad purpose". *Spies* v. *United States*, 317 U.S. 492, 497-498; *United States* v. *Murdock*, 290 U. S. 389, 394. In order to prove a violation of 26 U.S.C. 145(b), the government must show that the accused had a specific intent to evade taxation, tantamount to an intent to defraud the government. *United States* v. *Rosenblum*, 176 F. 2d 321, 329 (C.A. 7), certiorari denied, 338 U.S. 893; *Bloch* v. *United States*, 221 F. 2d 786, 788 (C.A. 9); *Tsoung Chu* v. *Cornell*, 247 F. 2d 929, 936 (C.A. 9), certiorari denied, 355 U. S. 892.[1]

In the instant case, the indictment charged petitioner with violations of 26 U.S.C. 145(b) for wilfully and knowingly attempting to defeat and evade income taxes by filing false and fraudulent returns understating his income. Fraud was charged and proved as an essential part of the crime. The convictions therefore did involve moral turpitude under the ruling in *Jordan* v. *DeGeorge*, 341 U. S. 223, 227, 232, that crimes in which fraud is proved as an ingredient of the offense are

[1] This Court's decision in the early case of *United States* v. *Scharton*, 285 U S. 518, upon which petitioner relies (Pet. 11), is not a holding that convictions under 26 U.S.C. 145(b) do not involve moral turpitude, so as not to furnish grounds for deportation. *Scharton* held merely that fraud was not in terms denominated an element of the offense for the purposes of the proviso of Section 1110(a) of the Revenue Act of 1926 setting out a six-year statute of limitations as an exception to the general three-year statute.

crimes involving moral turpitude as that term is used in the deportation statutes.[2]

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
MALCOLM ANDERSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

JUNE 1958.

[2] Petitioner's suggestion that Section 241(a)(4) of the 1952 Act and 26 U.S.C. 145(b), when construed together, are void for vagueness, as not affording a sufficiently definite standard for deportation (Pet. 11-12), is without substance. Cf. *Jordan* v. *DeGeorge*, 341 U.S. 223, 229-232. The two lines of decisions—requiring fraudulent intent for a tax evasion violation, and recognizing that crimes in which fraud is an ingredient involve moral turpitude—served as a sufficient warning, along with the specific statutory language of Section 241(a)(4), that petitioner's conduct would result in deportation. The fact that the statute operated retroactively was no bar to deportation. Cf. *Lehmann* v. *Carson*, 353 U.S. 685; *Mulcahey* v. *Catalanotte*, 353 U.S. 692; *Marcello* v. *Bonds*, 349 U.S. 302, 314.